



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

**[Docket Number FRA-2011-0077]**

### **Petition for Waiver of Compliance**

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The National Passenger Railroad Corporation (Amtrak) hereby petitions FRA for a temporary waiver from 49 CFR Part 214, Subpart C, seeking relief from the requirement to provide Roadway Worker Protection (RWP) for contractors and contractor employees (herein referred to as "workers") using hand tools within the 4-foot fouling envelope of a track in publicly accessible areas, specifically passenger station platforms. The waiver is sought for the express purpose of performing manual snow removal with hand tools, which extend into the tactile warning area of a passenger platform (if equipped with a tactile warning strip) or other warning areas beyond and including a similarly positioned and contrasting painted line (if not equipped), while the worker is behind the area and in a position of safety. The tactile warning area is the area beyond and including a 24-inch wide strip of truncated domes that is installed along the full length of the public use areas of a passenger platform (pursuant to the Americans with Disabilities Act (ADA) standards) and that is generally positioned approximately 24 inches

from the outside of the nearest rail. The request for relief from the regulation is limited to platforms outside of the Northeast Corridor at stations for which Amtrak is not the operating railroad.

Section 214.7 defines fouling a track as “the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment or, in any case, is within four feet of the field side of the near running rail.” In the case of a platform, 4 feet from the field side of the rail generally encompasses the space between the outside of the nearest rail and the platform plus the width of a 24-inch ADA-required tactile strip.

Currently, workers performing passenger station snow removal activities, which breach the tactile (or painted) warning area with hand tools, must be provided with on-track safety in accordance with the RWP rule, while pedestrians and the riding public may move throughout the system in the very same areas without restriction.

Contractor workers performing snow removal on passenger service infrastructure not owned by Amtrak are not qualified to provide on-track safety. Thus, workers may remove snow from platform areas behind the tactile (or paint-delineated) warning area, but must not remove snow in the area of the tactile (or paint-delineated) warning area without first establishing on-track safety in accordance with the RWP rule. As a result of this requirement, hazardous conditions on platforms remain unaddressed. Amtrak believes that the proposed “Alternate Protection” protocol used for specific snow removal activities will permit workers to address unsafe platform conditions from a safe location in a safe and timely manner without the worker being struck by a train while occupying the area of the platform behind the tactile warning strip or contrasting painted line.

Amtrak believes that an improvement to the safety of the riding public will take place in the form of faster response times, reduced hazardous walking conditions, and reduced passenger incidents should the waiver be granted. Amtrak submits that it is logical to assume that removing snow and ice from the tactile or paint-delineated warning areas of passenger station platforms would result in a reduction in slips, trips, and falls due to inclement weather at station platforms.

Amtrak also believes that no negative impact to the safety of workers removing snow will occur under the plan based upon examination of publicly-available data regarding passenger and employee injuries and fatalities on railroad passenger station platforms. Rail transit systems, outside of the umbrella of FRA regulation, currently do not have prescriptive requirements regarding contractor and employee protection when removing snow from station platforms. Under Federal Transit Administration oversight, no consistent RWP requirements exist nationwide. Such systems are permitted to perform snow removal activities at station platforms in accordance with protection requirements that the transit agency itself adopts. Many rail transit agencies have adopted policies similar to the practices that Amtrak proposes in this waiver, with no appreciable difference in worker injuries and fatalities on station platforms when compared to FRA data.

Amtrak conducted a comparative data analysis between transit systems and passenger railroads regarding worker injuries in station areas, as well as compared the average rate of injury to patrons within the transit industry to that of Amtrak's claimed injuries. The rate of worker injuries on transit systems in areas that regularly deal with climatic conditions, such as snow and ice, is consistent with (or in many cases below) the accident/injury rates of FRA-regulated passenger railroads in similar areas. While acknowledging that its analysis was not a

comparison between data collected under the exact same conditions and criteria, Amtrak submits that there is value in comparison between similar modes of transportation. Amtrak believes that the program for alternate protection for snow removal at station platforms, as proposed, (1) will provide an equivalent level of safety for workers who manually remove snow, according to the requirements under RWP, and (2) will improve the safety of the riding public. As such, Amtrak believes that relief from the application of fouling protection required when manually removing snow from a publicly accessible station platform is in the public's interest and consistent with railroad safety.

Slippery or snow-covered platform surfaces pose a significant risk to passengers, especially if such conditions exist close to the platform's edge. This potential risk continues so long as the slippery or snow-covered surfaces exist. In contrast, the potential risk to workers is intermittent due to dependence upon the presence of a train. Considering the differing levels of potential risk from both time-based and quantity-based perspectives, risk to passengers is significantly greater than the potential risk to workers.

Amtrak believes the RWP regulation was not written with consideration of risk to the traveling public, which occurs continuously so long as hazardous conditions due to snow-covered surfaces exist. Rather, the regulation is strictly focused on risk reduction for railroad workers. Passenger railroads are obligated to assign equal importance to the safety of passengers and workers. Amtrak believes that under the proposed procedures, workers will not be exposed to greater risk than they would under the on-track safety requirements (under the RWP rule) while manually removing snow; and passenger risk will be greatly reduced.

To ensure that workers using the alternate program to remove snow from platforms are not exposed to undue risk, the following conditions are proposed by Amtrak in its alternate program:

- a. Workers are not permitted to use powered equipment, such as snow blowers, to clear the tactile edge area of snow without appropriate on-track safety in accordance with the RWP rule.
- b. Any need for the worker to breach the strip or come within the 4-foot clearance envelope to push snow from the platform will require on-track safety in accordance with the RWP rule.
- c. Amtrak will train workers to be constantly alert for the movement of trains and to remain in areas of the platform, which are inaccessible to trains.
- d. The Amtrak training program for alternate snow removal protection details the conditions under which on-track safety in accordance with the RWP rule is needed, as well as the explicit conditions under which workers may occupy the station areas behind the tactile edge to remove snow.
- e. The training program explains the purpose of a good faith challenge as well as how to execute a challenge should work need to be performed that requires on-track safety in accordance with the RWP rule or is otherwise thought to be unsafe by the worker.
- f. Workers must demonstrate an understanding of the types of conditions that would require protection above and beyond that which would be permitted under this proposal, as well as the methods to execute a good faith challenge.
- g. Prior to any work commencing, workers must hold a job briefing.

- h. Workers removing snow from station platforms under alternate snow removal protection will not be permitted to work in single-man crews.

Under the alternate snow removal protection procedures, work groups would be required to appoint a safety monitor. The safety monitor would be required to conduct the job briefing and to maintain a means to contact Amtrak personnel as necessary. Safety monitors would observe all work for compliance with the requirements of the protection procedures and would ensure that all work would stop in the presence of a train.

Amtrak is dedicated to ensuring the safety of the riding public, as well as the safety of contractors and employees. Amtrak does not wish to seek a waiver from the RWP requirements when a worker is fouling the track in order to remove snow from areas other than the platform (e.g., clearing an inner-track walkway, or when a worker is required to breach the tactile edge with his or her person).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2011-0077) and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.

- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., W12-140, Washington, D.C. 20590.
- Hand Delivery: 1200 New Jersey Avenue, S.E., Room W12-140, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on November 9, 2011.

Robert C. Lauby  
Deputy Associate Administrator  
for Regulatory and Legislative Operations